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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

TODD L. LEANY,

Plaintiff,

v.

ZURICH AMERICAN INSURANCE
 COMPANY, a New York corporation;

Defendants.

ZURICH AMERICAN INSURANCE
 COMPANY,

Counterclaimant,

vs.

TODD L. LEANY,

Counterdefendant.

Case No.: 2:16-cv-01890-RFB-PAL

**PLAINTIFF'S JOINT MOTION TO MODIFY
 THE DISCOVERY PLAN AND SCHEDULING
 ORDER AND TO EXTEND THE DISCOVERY
 DEADLINE AND OTHER DEADLINES SET
 FORTH THEREIN**

Honorable Richard F. Boulware, II
 Magistrate Judge Peggy A. Leen
 Courtroom 7C

COMES NOW, Plaintiff/Counterdefendant, TODD L. LEANY, individually
 (hereinafter sometimes "Leany" or "Plaintiff"), by and through his counsel of record, D.
 CHRIS ALBRIGHT, ESQ. and WILLIAM H. STODDARD, JR. of the law firm of
 ALBRIGHT, STODDARD, WARNICK & ALBRIGHT; and Defendant/Counterclaimant,
 ZURICH AMERICAN INSURANCE COMPANY (hereinafter sometimes "Zurich" or
 "Defendant"), by and through its counsel of record ABRAN E. VIGIL, ESQ., MARIA A.

1 GALL, ESQ., and JOSEPH P. SAKAI, ESQ. of BALLARD SPAHR LLP, and, pursuant to **LR**
 2 **IA 6-1** and **LR II 26-4**, said parties hereby jointly move this Court for an Order to Modify the
 3 Order (ECF No. 12) which set forth this Court's Discovery Plan and Scheduling Order
 4 (hereinafter the "Prior Scheduling Order").

5
 6 More specifically, the parties hereby jointly move for a sixty (60) day extension of all
 7 dates set forth in the Prior Scheduling Order (ECF No. 12) which have not already expired. In
 8 other words, the parties request that:

9 • The February 17, 2017 deadline for expert disclosures and reports be extended an
 10 additional 60 days, until April 18, 2017, with rebuttal expert reports being due on May 17,
 11 2017;

12
 13 • That the current discovery cut-off date of April 17, 2017 be extended an additional
 14 sixty (60) days to June 16, 2017;

15 • That the current deadline for filing dispositive motions of May 17, 2017, be extended
 16 an additional sixty (60) days to July 17, 2017; and

17 • That the current deadline for filing the Joint Pre-Trial Order of June 17, 2017, be
 18 extended an additional sixty (60) days to August 16, 2017.

19
 20 This Motion is filed for good cause shown as set forth in the below ANALYSIS Section
 21 hereof, and is filed in a timely manner pursuant to LR II 26-4, 21 days before the expiration of
 22 any deadline sought to be extended herein, with the exception of the deadline for expert
 23 disclosures and reports, which the parties seek to extend for good cause shown, as discussed
 24 below.

25 **GOOD CAUSE ANALYSIS and LR II 26-4 STATEMENTS**

26
 27 LR II 26-4(a) Statement: Discovery completed in this matter to date: The parties have
 28 made their initial disclosures pursuant to FRCP 26. Plaintiff has served its first set of

1 Interrogatories, Requests to Produce and Requests for Admit. Defendant Zurich is in the process
2 of preparing written discovery, which will also be served in the near future.

3 LR II 26-4(b) Statement: Written discovery has not yet been completed. No
4 depositions have yet been completed.

5 LR II 26-4(c) Statement and Showing of Good Cause, including the reasons why the
6 deadline(s) will not be satisfied nor the remaining discovery completed within the time limits set
7 by the original discovery plan: Good cause exists for this Motion, for the following reasons,
8 which also explains the reasons why the deadlines sought to be extended herein will not be
9 completed within the time limits originally scheduled.

10
11 This matter is related to a separate case currently pending before the American
12 Arbitration Association (the “**AAA Proceeding**”), wherein Zurich has filed a Demand for
13 Arbitration against Century Steel, Inc., a Nevada corporation (which is not a party to this case),
14 as well as an individual, Todd L. Leany, who is the Plaintiff in this case. In the AAA
15 Proceeding, Zurich alleges claims for breach of contract against Century Steel, but has also
16 named Plaintiff Leany as an alleged alter ego of Century Steel in that matter. Plaintiff Leany
17 filed this action seeking, *inter alia*, declaratory relief that he is not required to appear in the AAA
18 Proceeding, and that he is not the alter ego of Century Steel. Zurich has filed a Counterclaim in
19 this action seeking, *inter alia*, declaratory relief that Leany is the alter ego of Century Steel and
20 that Leany must defend the claims Zurich has brought against him and Century Steel in the AAA
21 Proceeding.

22
23 To-date, the AAA Proceeding (which precipitated this matter), which was filed in August
24 of 2016, has been somewhat slow to move forward, inasmuch as it was necessary for the parties
25 to select an arbitration panel, and for that panel to then hold a preliminary administrative hearing
26 and issue a scheduling order. For reasons unrelated to any dilatory conduct by the undersigned,
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1 the dates for the preliminary hearing have been repeatedly postponed by the AAA or the panel
2 and a determination that the second scheduled hearing should not be completed pending possible
3 amendments to the pleadings to name new parties.

4 As a result, there have now been three (3) scheduled preliminary hearings, including,
5 most recently, a full and complete hearing on January 27, 2017, which resulted in the issuance of
6 a scheduling order by the AAA panel on February 1, 2017. Among the issues discussed in the
7 hearings and finally resolved in that final preliminary hearing, has been the scope of discovery to
8 be permitted in the AAA Proceeding. Since these cases are interrelated, the parties had been
9 waiting for clarity on the scope of discovery that would be allowed in the AAA Proceeding,
10 before commencing discovery in this case, so as to properly allocate discovery inquiries between
11 the two (2) matters, based on what would be permitted in the AAA Proceeding, and to hopefully
12 reduce redundancy in discovery between these matters.

13 For example, in the second preliminary hearing, the arbitration panel chair appeared to
14 have suggested that he might not be inclined to allow the parties to take any written discovery in
15 the AAA Proceeding, by way of Interrogatories. This undoubtedly would have affected the
16 manner in which written discovery was taken in the present case, due to the closely aligned
17 nature of the cases (and the fact that discovery taken in each case would undoubtedly overlap and
18 be relevant in certain instances to both cases). However, in the recent (third and final)
19 preliminary conference, the parties prevailed upon the arbitration panel to allow written
20 discovery to be taken by the parties in that proceeding. Until such clarity was provided, the
21 parties had been reluctant to commence discovery in the present case so as to understand the
22 scope of discovery to be taken in each case. This course will undoubtedly prove more efficient
23 and preserve the parties' and potentially judicial resources.

24 Since a scheduling order has now finally issued in the AAA Proceeding, the parties now
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1 understand what discovery will be permitted in each case, and can proceed accordingly. As a
2 result, while the parties have previously made initial disclosures, including the production of
3 documents identified therein, they can now tailor their discovery requests in each case
4 specifically to each separate proceeding.

5
6 With regard to the question of excusable neglect on the failure to file the present motion
7 within 21 days of the expert disclosure deadline (*i.e., the only deadline sought to be continued*
8 *that expires in less than 21 days from the date of the filing of this motion*), the parties do not
9 presently know whether any experts will be needed, and will not know that until they have seen
10 responses to each others' written discovery requests. Since the parties have felt it would
11 conserve resources to briefly wait on the arbitration panel to clarify issues related to the scope of
12 discovery in the AAA Proceeding, they are now in a position to issue their discovery requests,
13 which will answer the question of whether any expert witnesses are necessary. Expert
14 disclosures in the present case are not necessarily anticipated; however, they may become
15 necessary depending on the answers to discovery.

16
17 Therefore, it is respectfully requested that the sixty (60) day extension of deadlines
18 requested herein be granted.

19
20 LR II 26-4(d) Statement: Based on the foregoing, the parties hereby propose the
21 following schedule for completing all remaining discovery and for completing the remaining
22 matters currently scheduled in this case:

- 23
24 • That the February 17, 2017 deadline for expert disclosures and reports be extended an
25 additional 60 days, until April 18, 2017, with rebuttal expert reports being due on May 17,
26 2017;
- 27 • That the current discovery cut-off date of April 17, 2017 be extended an additional
28 sixty (60) days to June 16, 2017;

• That the current deadline for filing dispositive motions of May 17, 2017, be extended an additional sixty (60) days to July 17, 2017; and

• That the current deadline for filing the Joint Pre-Trial Order of June 17, 2017, be extended an additional sixty (60) days to August 16, 2017.

DATED this 14th day of February, 2017.

DATED this 14th day of February, 2017.

**ALBRIGHT, STODDARD, WARNICK
& ALBRIGHT**

BALLARD SPAHR LLP

/s/ William H. Stoddard, Jr.

/s/ Maria A. Gall

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ORDER

IT IS SO ORDERED.

DATED this 22nd day of February, 2017.


UNITED STATES MAGISTRATE JUDGE

Respectfully submitted,

/s/ William H. Stoddard, Jr.

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